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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,504	10/24/2003	Christian Zander	7468 US	9278

30078 7590 06/25/2010

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ART UNIT	PAPER NUMBER
2179	

MAIL DATE	DELIVERY MODE
06/25/2010	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/692,504
Filing Date: October 24, 2003
Appellant(s): ZANDER, CHRISTIAN

Michael J. Fogarty, III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/17/2010 appealing from the Office action mailed 11/12/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,732,213	Gessel et al.	03-1998
US 6,560,723 B1	Matsui	05-2003
WO 98/57268	Swift	12-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-7, 9-11 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Gessel et al. (US 5,732,213) in view of Matsui (US 6,560,723) and further in view of Swift (WO 98/57268).

Claim 1: Gessel discloses a method of setting up a procedure of a communication taking place between two instances, comprising the steps executable on the protocol tester of:

selecting the instances involved in the communication, a first instance being a protocol tester and a second instance being a device under test (col. 3, lines 15-32);

selecting a protocol layer to be emulated on the basis of which the communication between the selected instances is to take place (col. 3, lines 42-58);

selecting abstract communication interfaces of the protocol layer which are involved in the communication (col. 10, lines 15-32);

selecting communication data contained in description files to be exchanged at the abstract communication interfaces; (col. 3, lines 15-32).

within the communication data graphically (col. 11, line 55-col. 12, line 10);

with the selecting steps being performed graphically including a graphic configuration of a communication sequence between the instances involved (col. 11, lines 35-80); but does not explicitly disclose

defining a message from one instance to the other instance which contains a variable wherein the other instance performs one of several activities as a function of the content of the variable;

setting up a communication procedure executable between the instances through the protocol tester on the basis of the several selecting steps; but does not explicitly disclose

However Matsui discloses:

defining a message to be received at the protocol tester from the device under test which contains a variable wherein the protocol tester performs one of several activities as a function of the content of the variable (col. 1, lines 58-65 and col. 2, lines 10-14). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include Matsui's teaching in Gessel. One would have been motivated to do so in order to eliminate the need for expensive test equipment and test tools for monitoring the communication links and performing protocol analyses or other evaluation tests.

However Swift discloses:

setting up a communication procedure executable between the instances through the protocol tester on the basis of the several selecting steps, (message created, interfaces produced with PowerBuilder/PowerSockets, specific description file in fig. 3, 222 (message sequence definition) (page 7, paragraph 3, lines 1-5, fig. 4A, items 406-422). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include Swift's

teaching in Gessel. One would have been motivated to do so in order to eliminate the need for expensive test equipment and test tools for monitoring the communication links and performing protocol analyses or other evaluation tests.

Claim 2: Gessel Matsui and Swift disclose the method according to claim 1 above Matsui further discloses the step of specifying a switch functionality which the other instance executes as a function of the content of the variable (*test message function unit that perform transmission and reception based on information content*) (col. 7, lines 20-25). One would have been motivated to do so in order to improve the reliability of test data.

Claim 3: Gessel Matsui and Swift disclose the method according to claims 1 or 2 above Gessel further discloses the step of specifying a loop functionality which the other instance executes as a function of the content of the variable (a simulated node 139 labeled "Loop" is positioned in the center of the display and is a holding point where the simulation waits for another message to be received) (col. 11, lines 10-15).

Claim 4: Gessel Matsui and Swift disclose the method according to claim 3 above, Gessel further discloses the loop functionality is selected from the group consisting of a for-next, a do-while and a while-do functionality (The process then moves to the loop node 139 and waits for the MSC emulator to respond to the request message. If the location updating request is accepted, the BSC simulation receives a location updating accept message at node 142) (col. 11, lines 30-

35) [with the loop node 139 involved in the process, therefore these functionalities should be part of the process].

Claim 5: Gessel Matsui and Swift disclose the method 3 above, Gessel further discloses comprising the step of specifying a functionality selected from the group consisting of a jump/go-to functionality and an if-then functionality which the other instance executes as a function of the content of the variable (The process then moves to the loop node 139 and waits for the MSC emulator to respond to the request message. If the location updating request is accepted, the BSC simulation receives a location updating accept message at node 142) (col. 11, lines 30-35) [with the loop node 139 involved in the process, therefore these functionalities should be part of the process].

Claim 6: Gessel Matsui and Swift disclose the method according to claim 1 above, Swift further discloses the instances involved in the communication are graphically selected, the protocol layer is graphically selected, and the abstract communication interfaces are graphically selected (fig. 4a & 4b). One would have been motivated to do so in order to improve test data reliability.

Claim 7: Gessel Matsui and Swift disclose the method according to claim 1 above Swift further discloses the abstract communication interfaces comprise SAPs (Service Access Points) (specific device) (fig. 4b, items 413 & 438). One would have been motivated to do so in order to improve test data reliability.

Claim 8: Gessel Matsui and Swift disclose the method according to claim 1 above Matsui further discloses wherein the communication data comprise data selected from the group consisting of PDUs (Protocol Data Units) and ASPs (Abstract Service Primitives). (*the communication data comprise at least one type selected from the group consisting of Protocol Data Units (PDUs) and Abstract Service Primitives (ASP)* (column 1, lines 55-column 2, lines 10). One would have been motivated to do so in order to create a scenario for use in a conformation test.

Claim 9: Gessel Matsui and Swift disclose the method according to claim 1 Gessel further discloses the communication data selecting step comprises the steps of:

d1) graphically selecting a data format; and d2) graphically setting up the communication sequence between the instances involved (col. 11, lines 35-80).

Claim 10: Gessel Matsui and Swift disclose the method according to claim 9 above Swift further discloses the communication sequence setting up step comprises the step of entering source code (customizing software/code for testing purposes) (page 2, paragraph 2, lines 1-7). One would have been motivated to do so in order to improve test data reliability.

Claim 11 is the means claim of claim 1 and is similarly rejected under the same rationale.

(10) Response to Argument

The arguments, in the order presented by the appellant, will be addressed by the examiner.

A- Argument) There is no teaching or suggestion in Matsui that a "variable" in the input triggers the protocol tester to "perform one of several activities as a function of the content of the variable" as required in claims 1 and 11.

Response:

The examiner cited col. 1 and 2, which covers figure 1, which contains a message input/output unit 90 that links a test scenario unit with the test analyzing unit and the unit under test 160. The sequence buffer contains the message to execute a test (see step 411).Figure 5 shows the messages contain parameters and parameters are searched for in the buffer during the test. The message in the buffer has the following format: Name, format conversion, parameter analysis, sequence flow, information analysis, protocol adaptability etc. (see column 5, bottom and column 6, top). Test message unit acquires the message from the scenario buffer (see column 7). Test message input/output 90 controls the start/stop parameters of a test and as shown in figure 6. Column 7, lines 50-60 Matsui states it is possible to direct a unit to perform tests such as illegal test, fault test or the like based on a message sent to the unit. Therefore, a reasonable suggestion is that the unit under test can perform a fault test based on the message sent to it because the message expressly contains parameters or variables.

B- Argument) Applicants urge that The Matsui disclosure is missing the claimed "variable" as discussed above. Additionally, Matsui does not teach or suggest a specific "switch functionality" that is executed based on "the content of the variable" or any other trigger as required in claim 2.

Response:

Examiner submits that as per the applicant argument Matsui discloses test message input/output function unit that transmits/receives message to and from a facility under test (col. 5, lines 19-25). As for the switch functionality, (col 7, lines 54-58) discloses different scenarios for test such as an illegal test, fault test or the like where functionality will switch in reference to each one of these tests. Therefore, a reasonable suggestion is that the unit under test can perform a fault test based on the message sent to it because the message expressly contains parameters or variables.

C- Argument) Applicants argues that LOOP 139 in Gessel is not executed "as a function of the content of the variable" as required in claim 3.

Response:

The examiner cited a simulated node 139 labeled "Loop" is positioned in the center of the display and is a holding point where the simulation waits for another message to be received) (col. 11, lines 10-15). Gessel loop 139 is part of the simulation process where the

simulation is working in coordination with Loop 139 as far as message that needs to be distributed by this particular loop and different test sequences are shown in the first pan of the GUI of fig. 13. Therefore, a reasonable suggestion is that variable will change as different test sequences are being performed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Phenuel S. Salomon/

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